

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 1250 OF 2004

Bhagwan Nathyaba Sarak ... Appellant

V/s

Keru Bhuja Sarak ... Respondent

Mr. Uday Warunjikar for the appellant.

Mr. Vishwanath Talkute for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 23RD AUGUST, 2005

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. Rule. Rule made returnable forthwith by consent.

3. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Satara, dated 14.9.2004 dismissing the appeal and allowing the cross-objection of the plaintiff. In addition to the relief granted by the Trial Court, the appellant was further perpetually restrained from

obstructing respondent's possession in the suit properties, either personally or through agents, servants, etc.

4. The Trial Court, by its order dated 30.3.2001 had decreed the suit with direction that the defendant was perpetually restrained from ousting the plaintiff from the suit land and was also restrained from obstructing the plaintiff to take the water of suit wells by electric motors fitted on the said wells to the extent of his four anna share.

5. The plaintiff filed the suit for perpetual injunction against the defendants on the ground that he was in exclusive possession of four anna share in the suit property with right to take water to that extent and defendants were obstructing his possession and hence perpetual injunction was sought for.

6. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved his possession over the suit property to his title to the extent of four anna share and also proved that the defendants had obstructed plaintiff's possession in the suit property and hence the relief of

perpetual injunction came to be decreed.

The appeal was carried to the lower appellate Court along with the cross-objection. The lower appellate Court confirmed the decree and dismissed the appeal of the defendants and allowed the cross-objection of the plaintiff adding the relief to the extent of obstructing or disturbing respondent's possession. Hence the present appeal is filed.

7. After hearing both parties for some time, it was found that the facts and circumstances involved in the dispute were such that the appeal could be disposed of finally on merits. Admittedly, a partition suit being R.C.S. No. 19 of 2005 in the Court of Civil Judge, Jr.Divn., Phaltan is filed by the plaintiff which is pending adjudication. In the light of that aspect, both parties agreed that plaintiff's possession to the extent of four anna share should be protected pending the adjudication of the suit regarding partition of the suit properties as it is evident that the entire suit properties mentioned in the present suit are owned by both parties and were sought to be in joint Vahiwat. Be that as it may, the fact remains that both the Courts below have accepted the fact that plaintiff is in

exclusive possession of his four anna share in the entire property with his right to take water from the wells to the extent of same share. The only anxiety of the plaintiff appears to be that his possession should not be interfered with and he should not be ousted from the property pending adjudication of the partition suit pending in the Trial Court as noted above.

8. Therefore, in view of the facts and circumstances, it is hereby directed that the appellant-defendants shall not obstruct the respondent's possession in four anna share in the suit properties nor he shall be ousted from the properties in any manner, as directed by both the Courts below. It is clarified that the rights of both parties shall be determined in the suit for partition which is filed and pending adjudication.

The Trial Court is directed to expedite the hearing of the partition suit (R.C.S. No. 19 of 2005) pending in the Court of Civil Judge, Jr.Divn., Phaltan, Dist. Satara and dispose it of as early as possible and at any rate by the end of March, 2006 as the written statements are filed and the suit is awaiting framing of issues.

With these directions, the appeal stands disposed of

with no order as to costs. Consequently, Civil Application No. 1691 of 2004 also stands disposed of with no order as to costs.

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